

Benjamin L. Coleman #187609

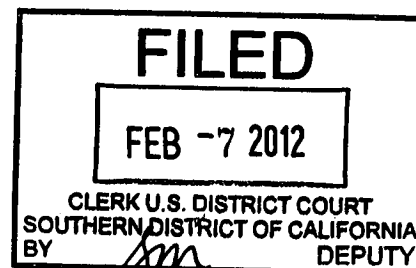
Name

1350 Columbia St. Suite 600

Prison Number

San Diego, CA 92101

~~Place of Confinement~~



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Ralph Inzunza)

Full Name of Movant)

VS)

UNITED STATES OF AMERICA)

Case No. 03 cr 2434 JM
(Issued by Clerk's Office)

MOTION, PURSUANT TO TITLE
28 U.S.C. SEC. 2255

(If movant has a sentence to be served in the FUTURE under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

**MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY
A PERSON IN FEDERAL CUSTODY**

INSTRUCTIONS--READ CAREFULLY

- 1) This motion must be legibly handwritten or typewritten and signed by the movant. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.
- 2) Additional pages are not permitted. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- 3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.
- 4) If you do not have the necessary funds for transcripts, counsel, appeal and other costs connected with a motion of this type you may request permission to proceed in forma pauperis, in which event you must execute the last page, setting forth information

establishing your inability to pay costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

- 5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.
- 6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- 7) When the motion is fully completed, the **original and two copies** must be mailed to the Clerk of the United States District Court, 880 Front Street Suite 4290, San Diego, California 92101-8900.
- 8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court which entered the judgment of conviction under attack:
U.S. District Court, Southern District of California
2. Date of judgment of conviction: November 21, 2005
3. Length of sentence: 21 months Sentencing Judge: Jeffrey T. Miller
4. Nature of offense or offenses for which you were convicted:
Honest services fraud, 18 U.S.C. 1346
Extortion under color of official right, 18 U.S.C. 1951
Conspiracy, 18 USC 371
5. What was your plea? ☒ Not Guilty ☐ Guilty ☐ Nolo Contendere
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

- _____
- _____
- _____
6. Kind of trial: ☒ Jury ☐ Judge Only
7. Did you testify at the trial? ☐ Yes ☒ No
8. Did you appeal from the judgment of conviction? ☒ Yes ☐ No
9. If you did appeal, answer the following:
- (a.) Name of court Ninth Circuit, U.S. Supreme Court
- (b.) Result Affirmed
- (c.) Date of Result April 12, 2011, Cert. denied Jan. 9, 2012
10. Other than a direct appeal from the judgment of conviction and sentence have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
- ☐ Yes ☒ No
11. If your answer to 10 was "yes," give the following information:
- (a.) (1.) Name of court _____
- (2.) Nature of proceeding _____
- (3.) Grounds raised _____
- (4.) Did you receive an evidentiary hearing on your petition, application or motion?
- ☐ Yes ☐ No
- (5.) Result _____
- (6.) Date of result _____

(b.) As to any second petition, application or motion give the same information:

(1.) Name of court _____

(2.) Nature of proceeding _____

(3.) Grounds raised _____

(4.) Did you receive an evidentiary hearing on your petition, application or motion?

_____ Yes _____ No

(5.) Result _____

(6.) Date of result _____

(c.) As to any third petition, application or motion give the same information:

(1.) Name of court _____

(2.) Nature of proceeding _____

(3.) Grounds raised _____

(4.) Did you receive an evidentiary hearing on your petition, application or motion?

_____ Yes _____ No

(5.) Result _____

(6.) Date of result _____

(d.) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1.) First petition, etc. _____ Yes _____ No

(2.) Second petition, etc. _____ Yes _____ No

(3.) Third petition, etc. _____ Yes _____ No

- (e.) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12 State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) though (j) or any one of these grounds.

- (a.) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b.) Conviction obtained by use of coerced confession.
- (c.) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d.) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e.) Conviction obtained by a violation of the privilege against self-incrimination.
- (f.) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g.) Conviction obtained by a violation of the protection against double jeopardy.
- (h.) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i.) Denial of effective assistance of counsel.

(j.) Denial of right of appeal.

- A. Ground One: 5th/6th Amendments violated because false testimony of cooperator not allowed to be rebutted with immunized defense witness

Supporting FACTS (tell your story briefly without citing cases or law):

Mr. Inzunza sought immunity for codefendant Lance Malone so that he could testify to rebut the allegations of government cooperating witness Michael Galardi, including Galardi's false claim that Mr. Inzunza accepted cash payments. Malone would have directly contradicted Galardi, and therefore he should have been given immunity because the government gave

Galardi sentencing benefits, distorting the fairness of the trial.

- B. Ground Two: A new trial is required under the Fifth and Sixth Amendments due to cumulative constitutional error.

Supporting FACTS (tell your story briefly without citing cases or law):

Even if the above error does not require a new trial standing on its own, it requires a new trial when considered in combination with the "say it ain't so" constitutional error found by the Ninth Circuit and the failure to turn over material that further impeached Galardi.

- C. Ground Three: Alternatively, resentencing is required under the Fifth and Sixth Amendments.

Supporting FACTS (tell your story briefly without citing cases or law):

At the very least, Malone's proposed testimony should be considered in the context of a resentencing. Moreover, the government failed to produce exculpatory evidence that further undercut Galardi's testimony. The Court should reconsider

Mr. Inzunza's sentence with this new information, and it should further consider that the jury instructions set forth a lesser gratuity offense, which carries less onerous guidelines.

D. Ground Four: _____

Supporting FACTS (tell your story briefly without citing cases or law):

13 If any of the grounds listed in 12. A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

14 Do you have any petition or appeal not pending in any court as to the judgment under attack?

_____ Yes x No

15 Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a.) At preliminary hearing Michael Pancer, 105 West "F" Street,
Fourth Floor, San Diego, CA 92102

(b.) At arraignment and plea Michael Pancer, 105 West "F" Street,
Fourth Floor, San Diego, CA 92101

(c.) At trial Michael Pancer, 105 West "F" Street, Fourth
Floor, San Diego, CA 92101

(d.) At sentencing Michael Pancer, 105 West "F" Street,
Fourth Floor, San Diego, CA 92101

(e.) On appeal Benjamin L. Coleman, 1350 Columbia Street,
Suite 600, San Diego, CA 92101

(f.) In any post-conviction proceeding _____

(g.) On appeal from any adverse ruling in a post-conviction proceeding

16 Were you sentenced on more than one count of an indictment, or on more than one indictment/information, in the same court and at approximately the same time?

 x Yes No

17 Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

 Yes x No

(a.) If so, give name and location of court which imposed sentence to be served in the future:

(b.) And give date and length of sentence to be served in the future:

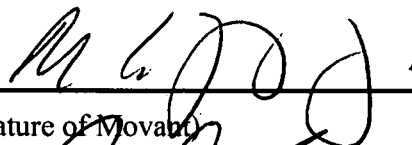
- (c.) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?


 Yes No

Wherefore, movant prays that the court grant him all relief to which he/she may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1/20/12


(Signature of Movant)


(Signature of Attorney, if any)

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

I am employed in the County of San Diego, State of California; I am over the age of eighteen years and not a party to the within action; my business address is: 1350 Columbia Street, Suite 600, San Diego, California 92101.


On February 7, 2012, I caused a true copy of Motion, Pursuant To Title 28 U.S.C. Sec. 2255 upon the interested parties by the method(s) indicated:

Robert Ciaffa
Michael Wheat
Assistant United States Attorneys
880 Front Street, Room 6293
San Diego, California 92101

- (x) (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business.
- () (BY FEDERAL EXPRESS) by using express mail service and causing to be delivered overnight next day delivery a true copy thereof to the person(s) at the address set forth above.
- () (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
- () (FACSIMILE) I caused such document(s) to be transmitted to the addressee(s) facsimile number noted above. The facsimile machine I used complies with Rule 2003(3) and the transmission was complete without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 7, 2012, at San Diego, California.


Benjamin L. Coleman